90-654

Supreme Court, U.S.
FILED
JUL 23 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

TIMOTHY SHEEHAN,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Superior Court of the State of California, Alameda County, Appellate Department.

PETITION OF WRIT OF CERTIORARI

TIMOTHY W. SHEEHAN
18487 Fleetwood Avenue
Castro Valley, CA 94546
1 (415) 582-0417

Pro se petitioner

QUESTIONS FOR REVIEW

1. Whether a State imposed kangaroo court, involving roadway violations, may prosecute U.S. citizens in variance with Article IV, Section 2, Subparagraph one, or otherwise be contrary to the Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the U. S. Constitution?

2. Whether a State court has decided an important issue regarding what are the basic immunities and privileges entitled to U.S. citizens facing prosecution for public roadway violations?

3. Whether all rights intrinsic to U.S. citizens were preserved by the State of California, in this case, to establish a fair trial?

4. Whether State court appointed "Commissioner" may adjudge U.S. citizens in criminal proceedings?

5. Whether police who activate radar on a section of roadway which speed limit has not been justified by independent engineering and traffic study violate the unreasonable searches and seizures clause of the Fourth amendment?

6. Whether court proceedings having no verifiable court record violates due process?

7. Whether jury trial is an inviolate right to U.S. citizens facing criminal prosecution that can be guaranteed under the Fourteenth amendment when over two-thirds of the Union agrees by constitution of the several States?

LIST OF PARTIES

TIMOTHY SHEEHAN.....Pro se petitioner

JOHN J MEEHAN.....Respondent

JOHN VAN DE CAMP.....Attorney General

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JURISDICTION STATEMENT

Petitioner, Timothy W. Sheehan, respectfully beseeches the Supreme Court of the United States to grant a writ of certiorari to review the decision of the Superior Court of California, decided May 25, 1990, attached as A-1, on the grounds that a state court has decided an important issue of law which has not been, but should be, settled by this court. The statutory provision believed to confer on this Court jurisdiction is 28 USC 2101 (d) and 24 USC 1981.

PROVISIONAL CITATIONS

ARTICLE I, SECTION 2.1

The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States.

BILL OF RIGHTS, ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the things to be seized.

BILL OF RIGHTS, ARTICLE V

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time or war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor be deprived of life, liberty or property, without due process of law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

BILL OF RIGHTS, ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and couse of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

BILL OF RIGHTS, ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

BILL OF RIGHTS, ARTICLE VIII

excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RECONSTRUCTION AMENDMENT

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein the reside. No State shall make or enforce any laws which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

42 S 1981

All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pain, penalties, taxes, licenses, and exactions of every kind, and to no other.

STATEMENT OF THE CASE

Petitioner was cited for a traffic violation of the basic speed law[1] on a section of public roadway wherein the City of San Leandro had a posted speed limit which had not been justified by Engineering and Traffic survey for 85 percent of the prevailing traffic and accident history. This is required by California's Department of Transportation and State statute[2] whenever radar was used to determine the speed of any vehicle for law enforcement.

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[1] Section 22350 of the California Vehicle Code (hereafter cited as CVC), states: "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property."

[2] See Section 40803(b) CVC in APPENDIX C-2

Upon a written promise to appear, bail was set for $118.50 Dollars,[3] and the petitioner appeared at arraignment on August 2, 1989 to have charges and rights read. At no time did petitioner receive any written material to assist him to understand what rights he had; nor was he advised individually or as a whole of his right to employ counsel.[4] Via video, he was simply told that laws had changed and "today" he would not be allowed to legal advice from the court.

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[3] See Penal Code Section 1463 in APPENDIX, In the Spring of 1987, for example, Alameda County purchased $27,500 Dollars of radar equipment for use by the CHP within the county, which will produce, according to county officials, an additional $200,000 Dollars a year in ticket revenues. FIGHT YOUR TICKET, Brown (1987) p. 18:3

[4] Failure of municipal court to individually advise defendant of his right to counsel was constitutional infirmity which required new trial. State v. Gonzalez, N.J. 1989, 556 A.2d 323.

Petitioner pleaded not guilty to the charge, claimed "all rights under law," and demanded verified complaint be filed, but the arraignment was continued, and Petitioner received complaint which was signed by somebody other than the citing officer. Petitioner entered a plea of not guilty to that charge; and when asked to do so, reiterated, "I haven't waived any of my rights." A court trial was held on September 12 and 19, 1989.

Over Petitioner's objection, no Engineering and traffic survey was physically introduced into evidence;[5] nor was Petitioner allowed to examine one in open court.

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[5] In speeding cases involving the use of radar, prosecution has the burden of producing traffic and engineering survey taken within five years that justifies speed limit imposed on section of highway on which radar is used so that radar use does not constitute "speed trap", and defendant has right to challenge the survey. West's Ann.Cal.Vehicle Code S 40802 40803(b) People v. Peterson, (1986) 181 Cal.App.3d. Supp. 7

On September 19th, petitioner brought into court a photocopy of the traffic survey that revealed the posted speed limit to be four miles per hour below prevailing speed survey's zero percentile.[6] This established the roadway as a "speed trap" as defined by statute.[7] Thus, testifying officer was a statute defined "incompetent witness."[8]

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[6] See radar speed survey number 38 in APPENDIX E-1

[7] See Section 40802 CVC in APPENDIX C-1

[8] See Section 40801 and 40804(a) CVC in APPENDIX. Also, Re: Jane Kelly Segesman, People v. Stone, (1987) 190 Cal.App.3d. Supp. 1 (see APPNDX)

* Defendant Segesman's appeal appears to rest solely on the credibility of the arresting officer. Although she does not raise the speed trap issue, under section 40805 of the Vehicle Code, her judgment of conviction is void if she was arrested pursuant to a speed trap. (see footnote 8) Thus, that issue is properly considered in her appeal as well. 8. Section 40805 provides: "Every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of this code involving the speed of a vehicle if the court admits any evidence or testimony secured in violation of, or which is inadmissible under this article."

Upon conclusion, petitioner was found guilty of "exceeding the critical speed," that being other than the charge on complaint[9] and was sentenced immediately.[10] Appeal notice was filed October 10, 1989.

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[9] **Defective Verdict**

* * * * *

Where the verdict finds the defendant guilty of an offense other than that charged and not included therein the verdict is void and the discharge of the jury has the same effect as if the jury had been discharged without returning any verdict and the defendant can successfully claim former jeopardy if again prosecuted for the offence charged. (People v. Arnarez, 68 Cal.App. 645; People v. Arnett, 129 Cal.306; People v. Curtis, 76 Cal. 57.)

CALIFORNIA CRIMINAL LAW, Fricke 10Ed p.443,444

[10] California Penal Code Section 1449 states as follows: "In inferior courts, after a plea, finding or verdict of guilty, or after a finding or verdict against the defendant on a plea of former conviction or acquittal, or once in jeopardy, the court must appoint a time for pronouncing judgement which must not be less than six hours, nor more than five days, after the verdict or plea of guilty, unless the defendant waives the postponement; ..."

Petitioner duly filed his proposed settled statement, and respondent's time to file proposed amendment per California rules of court, No. 185, expired. At no time was petitioner informed about the nature of the hearing absent respondent's proposed amendment; nor was petitioner made aware his settled statement would be challenged by that hearing. At no time did petitioner receive service of a copy of any type of transcript or statement prior to that hearing. At no time was petitioner informed of his right to employ counsel or that counsel would be beneficial at this stage, so that counsel of his choice may have been present at the hearing.

The trial judge simply read what the substantially rewritten settled statement would be,[11] and petitioner objected. The

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[11] Related to the right of self-representation is the right to testify in one's own defense. Rock v. Arkansas, 483 U.S.-, 97 L.Ed.2d. 37 (1987).

trial judge refused to alter any portion of the statement, and the reason he gave was that "he didn't want to have to sit through another trial." When petitioner told trial judge that rule No. 187 did not permit him to eliminate any grounds on appeal, that he was not served a copy of the document which was read to him, in order to prepare beforehand, trial judge told him that, he "didn't have to be served," that "we follow our own rules here," and "If you want to change the law, do it some place besides in here." [12]

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[12] Afterward, a "makeshift" notice, attempting to evoke reviewing court to make factual determinations pursuant to California's Code of Civil Procedure S 909 (see APPENDIX) was filed. Since certified settled statement was lacking defendant's reaction and response to the officer's "confession" testimony, the document, being one sided, severely prejudiced petitioner's appeal.

Crane v. Kentucky, 476 U.S. 683 (1986) (exclusion of testimony as to circumstances of a confession can deprived a defendant of a fair trial when the circumstances bear on the credibility as well as the voluntariness of the confession).

This cause was transferred to the appellate department of Alameda County in Superior Court. Subsequently, case was fully briefed, and oral arguments were presented on May 25, 1990. The Court ordered judgement from the trial court affirmed 3-0. No opinion was written.

UPON QUESTIONS RAISED

Since petitioner claimed all rights under law in the court of first instance, he is entitled to the rights afforded him as a citizen of the United States, without necessarily being fully cognizant of what those rights entail. Thus those who have jurisdiction are obligated to inform that citizen fully or to appoint a guardian to defend those rights at every stage.[13]

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[13] In addition to counsel's presence at trial, accused is guaranteed that he need not stand alone against state at any stage of prosecution, formal or informal, in court or out, where counsel's absence might derogate accused's right to fair trial. U.S. v. Wade, Texl967, 87 S.Ct. 1926, 388 U.S. 218, 18 L.Ed.2d 1149. (see also, Davis v. Stevens, D.C.N.Y. 1971, 326 F.Supp. 1182.

Otherwise states take an unconscionable advantage over the very citizens that government was instituted to protect. Law becomes tyranny, and liberty is purely circumstantial, and nobody is secure.[14]

In the appellate court the federal questions sought to be reviewed were raised in petitioner's opening brief, "Whether the court was without jurisdiction to find appellant guilty..." and "Whether all appellant's rights were preserved by the State of California regarding trial by impartial jury." These questions were passed upon by the court without a written opinion. Affirmed 3-0.

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[14] ("The purpose of trial by jury is to prevent oppression by the Government by providing a safeguard ...against the complaint, biased, or eccentric judge." Apodaca v. Oregon, (1972) 406 U.S. 404,406.)

REASON TO ALLOW WRIT

Under Article III, Section 2 and the Reconstruction Amendment, the privileges and immunities of U.S. citizens is one of federal concern. However, no judicial test has defined those things which U.S. citizens are entitled. Moreover, public roadways within several states receive federal funding and regulatory standards to establish safety and the free flow of traffic.

Contrary to the Fourteenth Amendment, California has abridged prosecution immunity from citizens accused of public offences, known as infractions, without due process. Moreover, that statute is also in conflict with California's own Constitution, as well as an older Penal Code.* Unfortunately, for over sixteen

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* The text itself will establish Section 19.6 PC conflicts with Article I, Section 16 and Section 689 PC.

years California has refused to regulate itself while enjoying the financial benefits of kangaroo court proceedings. At first only parking violations were classified as infractions. Then moving violations were added. In 1974, the right to a jury trial and court appointed representation vanished.[15] In 1975, the double jeopardy clause prohibiting multiple prosecutions for the same act was not applied to infractions[16] In 1978, lower paid non judges were allowed to hear traffic cases.[17] In 1979 California's Supreme Court ruled that the state is not required to pay prosecuting attorneys to appear in traffic cases.[18] Now an alarming new law this year permits officers to revoke a license on the spot without even a day in court!

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[15] People v. Oppenheimer,(1974) 42 Cal.App. 3d. Supp. 4, 116 Cal.Rptr. 795 (see K-2)

[16] In re Dennis B (1976) 18 Cal.App.3d. 768 People v. Battle, (1975) 50 cal.app.3d Supp. 1.

The fact that an infraction is a criminal offence and that state motor vehicles department keeps permanent computerized records allowing four violations within a twelve month period to bear a six month jail time puts this cause in perspective.[19] Nevertheless, failure to sign a citation or to appear as promised requires a physical custodial arrest.[20] Furthermore, California shares

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[17] People v. Lucas, (1978) 82 Cal.App.3d 47 (see K-3)

[18] People v.Carlucci, (1979) 23 Cal.App3d.249 (see K-4)

[19] Section 40000.28 CVC states: "Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this code or any local ordinance adopted pursuant to this code within the 12-month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged."

[20] See S 40302 CVC in APPENDIX G-1

traffic information with other western states. Their constitutions claim a jury system with similar language congruous to the federal constitution, but California, making the same claim*, is unwilling to follow through in practice.

Finally, a citizen of the United States is still a citizen of the United States, and each is entitled to the same fair treatment under the privileges and immunities clause. Yet no standard exist apart from the federal constitution which establishes what are the minimum due process requirements by which a state may prosecute U.S. citizens within its jurisdiction for which citizenship implies intrinsic immunity.

CONCLUSION

The petition must be granted because California is enforcing laws which deprive citizens of property without due process protection and "that the States and the

Federal Government in all circumstances must be viewed as coequal sovereigns — is not representative of the law today." [21]

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[21] Puerto Rico v. Branstad, 483 U.S. —, 97 L.Ed.2d 187, 195-96 (1987) (quoting FERC v. Mississippi, 456 U.S. 742, 761 (1982)).

* * * * * * * * * * * * *

For the foregoing reasons, petitioner Timothy W. Sheehan respectfully requests that a writ of certiorari be granted to review the decision of the Superior Court of the State of California attached as APPENDIX A affirming the decision of the Municipal Court attached as APPENDIX B

Respectfully submitted,

Timothy W. Sheehan

8/27/90

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18487 Fleetwood Avenue
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pro se petitioner

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ACTION No. 2491

TIMOTHY SHEEHAN,

Defendant-Appellant

v.

CALIFORNIA,

Plaintiff-Respondent

DECIDED: May 25, 1990

Before Dawn B. Girard, Pres Judge, Philip Sarkisian, Judge, Richard Hodge, Judge.

RULING BY THE COURT

In the above entitled action, oral argument having been presented, the Court orders judgment from the trial court affirmed 3-0.

MUNICIPAL COURT OF THE

SAN LEANDRO-HAYWARD DISTRICT ALAMEDA COUNTY

DOCKET No. 5365005

TIMOTHY SHEEHAN,

Defendant

V.

PEOPLE,

Plaintiff,

DECIDED: August 19, 1989

A warrant for arrest will be issued if you fail to appear or pay fine. 22350

Pay fine of $95 by (date) October 27, 1955

Calif. Vehicle Codes

40801. Speed trap prohibition

No peace officer or other person shall use a speed trap in arresting, or participating or assisting in the arrest of, any person for any alleged violation of this code nor shall any speed trap be used in securing evidence as to the speed of any vehicle for the purpose of an arrest or prosecution under this code.

40802. Speed trap defined

A "speed trap" is either of the following:

(a) A particular section of a highway measured, as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(b) A particular section of a highway with a prima facie speed limit provided by this code or by local ordinance pursuant to parahraph(1) of subsection (b) of Section 22352, or pursuant to Section 223454, 22357, 22358, or 22358.3, which speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar or other electronic devise which measure the speed of moving objects. The provision of this subdivision do not apply to local streets and roads.

For purposes of this section, local streets and roads shall be defined by the latest functional usage federal-aid system map as submitted to the Federal Highway Administration. When these maps have not been submitted, the following definition shall be used: A local street or road primarily provide access to abutting residential property and shall meet the following three conditions:

(1) Roadway width of not more than 40 feet.

(2) Not more than one-half mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Section 445

(3) Not more than one traffic lane in each direction.

This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

40803. Speed trap evidence

(a) No evidence as to the speed of a vehicle upon a highway shall be admitted in any court upon the trial of any person for an alleged violation of this code when the evidence is based upon or obtained from or by the maintenance or use of a speed trap.

(b) In any prosecution under this code of a charged involving the speed of a vehicle, where enforcement involves the use of radar or other electronic devices which establish, as part of its prima facie case, that the evidence or testimony presented is not based upon a speed trap as defined in subdivision (b) of Section 40802. Evidence that a traffic and engineer survey has been conducted within five years of the date of the alleged violation or evidence that the offense was committed on a local street or road as defined in subdivision (b) of Section 40802 shall constitute a prima facie case the evidence or testimony is not based upon a speed trap as defined in subdivision (b) of Section 40802.

40804. Testimony based on speed trap

(a) In any prosecution under this code upon a charge involving the speed of a vehicle, any officer or other person shall be incompetent as a witness if the testimony is based upon or obtained from or by the maintenance or use of a speed trap.

(b) Every officer arresting, or participating or assisting in the arrest of, a person so charged while on duty for the exclusive or main purpose of enforcing the provisions of Divisions 10 and 11 is incompetent as a witness if at the time of such arrest he was not wearing a distinctive uniform, or was using a motor vehicle not painted the distinctive color specified by the commissioner.

This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to any theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or in reference to any felony charge or to any officer engaged in serving any warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws.

40805. Admission of speed trap evidence

Every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of this code involving the speed of a vehicle if the court admits any evidence of testimony secured in violation of, or which is inadmissible under this article.

Footnote No. 3

S 1463. Disposition of fines and forfeitures collected in municipal or justice courts.

Except as otherwise specifically provided by law:

(a) County funds; arrests by state or county. All fines and forfeitures including Vehicle Code fines and forfeitures collected upon conviction or upon the forfeiture of bail, together with moneys deposited as bail, in any municipal court or justice court, shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which the court is situated. The moneys so deposited shall be distributed as follows:

(1) Deposited and distribution. Once a month there shall be transferred....

(2) City traffic safety fund; special road fund of county; general fund of county. Except as otherwise provided in this subdivision, once a month there shall be transferred into the traffic safety fund of each city in the county an amount equal to 50 persect of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeitures collected of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within that city, and an amount equal to the remaining 50 percent shall be transferred to the special road fund of the county. However, the board of Supervisors of the county may, by resolution, provide that not more than 50 percent of the amount otherwise to be transferred to the special road fund of the county, be transferred into the general fund of the county; and the Board of Supervisors of Merced or Yolo County may provife, by resolution, that until

July 1, 1994. up to 100 percent of the amount otherwise to be transferred to the special road fund of the county shall be transferred into the general fund of the county for the purpose of funding court operations

Once a month there shall be transferred into the general fund of the county an amount equal to that percentage of the fines and forfeiture collected during the preceding month upon the conviction or upon forfeiture of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code on state highways constructed as freeways whereon city police officers enforced the provisions of the Vehicle Code on April 1, 1965, within the limits of a city within the county which is set forth in the schedule appearing in paragraph (3). If this paragraph is applicable within a city, it shall apply uniformly throughout the city to all freeways regardless of the date of freeway construction or completion.

(3) County general fund; arrests by city officers. Once a month there shall be transferred into the general fund of the county....

In any county for which a county percentage is set forth in the above schedule and which contains a city which is not listed or which is hereafter created, there shall be transferred to the county general fund the county percentage. In any county for which no county percentage is set forth, and in which a city is hereafter to the county general fund 15 percent.

A county and a city therein may, by mutual agreement, adjust the percentages herein.

Radar Speed Survey #38

Roadway: Lake Chabot Road May 21, 1986

Speed Limit: 25 Recorded by: J.M.

Location: At Mile Marker 3.50

Begin: 13:40 End: 14:50

Direction: NBT

MPH	Autos	Trucks	No.	%
50				
49	i		1	100
48	i		1	99
47	i		1	98
46	ii		2	97
45				
44	i		1	96
43	v		5	95
42	iiii		4	90
41	viii		8	87
40	vi		6	80
39	vii		7	74
38	viii		8	68
37	vv		10	61
36	vviii	i	14	52
35	vvi		11	39
34	vv		10	30
33	viiii		9	21
32	vi		6	13
31	iiii		4	7
30	ii		2	4
29	ii		2	2
28				
27				
26				
25	- - - - - - - - - - - - - - - - - - - -			
Total			112	

10 MPH PACE: 32-42mph CRITICAL SPEED: 40.7

Footnote No. 12

CODE OF CIVIL PROCEDURE

S 909. Factual determination on appeal; non-jury cases; additional evidence; giving or directing entry of judgment or order; construction of section

In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the reviewing court may make factual determinations contrary to or in addition to those made by the trial court. The factual determinations may be the based on evidence adduced before the trial court with or without the taking of evidence by the reviewing court. The reviewing court may for the purpose of making the factual determinations or for any other purpose in the interest of justice, take additional evidence of or conserning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgement or order and may make any further or other order as the case may require. This section shall be liberally construed to the end among others that, where feasible, cause may be finally disposed of by a single appeal and without further proceedings in the trial court except where in the interest of justice a new trial in required on some or all of the issues.

APPELLATE RULES TO SUPERIOR COURT
RULE 185

The respondent may within 15 days after such statement is filed, or notice is given of the filing of such transcript, served on the appellant and file proposed amendments to be statement or transcript, or both.

IN THE SUPREME COURT OF THE UNITED STATES

APPELLATE RULES TO SUPERIOR COURT

RULE 187

Upon the filing of such proposed amendments or the expiration of the time for filing them, the trial judge shall forthwith fix a time for settlement of the statement or transcript, or both, which time shall be as early as the business of the court will permit, either in chambers or in open court, and cause notice to be mailed, at least five days before the time fixed, to each party, or, if any party appears by attorney, then to the attorney, if the mailing address of the party or attorney appears in the files of the case in which the apeal is taken. The trial judge shall at time fixed, or any other time to ehich the matter may be continued, settled the statement or trnscript, or both, as may be necessary to make it set forth fairly and truly the evidence and proceeding relating to the specified grounds of appeal or the matter set forth by the appellant in support of it.

* * * * *

THE APPELLANT'S SPECIFICATIONS OF GROUNDS OF APPEAL SHALL NOT IN ANY CASE BE ELIMINATED FROM THE STEELED STATEMENT. At the time of settlement the judge may direct the appellant to

engross the statement or transcript, or both, as settled. Thereupon the appellant shall engross the statement or transcript, or both as corrected and settled and present it to the judge for certification within five days from the date of settlement, and if the appellant fails to do so within that period or any lawful extension, the right to have the statement or transcript settled or certified shall terminate. If a statement or transcript is settled and engrossed, if engrossed is ordered, the trial judge shall certify the statement or transcript after or before ceasing to be the trial judge. If the judge dies, is removed from office, becomes disqualified, or is absent from the state at the time for settling or certifying a statement or transcript, it may be settled or certified by any other judge of the court to act.

* * * * *

The clerk of the trial court shall promptly mail copies of the statement, as settled and certified by the judge, to counsel for the parties and to unrepresented parties, unless the judge certifies that the statement proposed and filed by the appellant was settled without significant change.

Footnote No. 20

S 40302 CVC

Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

(a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.

(b) When the person arrested refuses to give his written promise to appear in court.

(c) When the person arrested demands an immediate appearance before a magistrate.

(d) When the person arrested is charged with violating Section 23152.

Footnote No. *

Penal Code S 16. Crimes; kinds

Crimes and public offenses include:
1. Felonies;
2. Misdemeanors; and
3. Infractions

Penal Code S 19.6

An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.

Calif. Const. Art.I, sec.16

Trial by jury is an inviolate right and shall be secure to all, but in a civil cause three fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

Penal Code S 689. Conviction only by verdict, finding, or plea

No person can be convicted of a public offense unless by a verdict of a jury, accepted and recorded by the court, by a finding of the court in case where a jury has been waived, or by a plea of guilty.

People v. Stone

190 Cal.App.3d. Supp. 1

The PEOPLE, Plaintiff and Respodent,

v.

Henry STONE, Defendant and Appellant.

PEOPLE

v.

Jane Kelly SEGESMAN, Defendant and Appellant.

Crim. A. 22098 Crim. A. 22879

Appellate Department, Superior Court,

Los Angeles County.

Jan. 21, 1987.

Defendants were convicted in the Municipal Court for the Los Angeles Judicial District, Los Angeles County, Louis D. Brown and Leo L.Grizzaffi. Temporary Judges of violating local ordinance prohibiting speeding in public parks, and they appealed. The Appellant Department, Superior Court, Los Angeles County, Bernstein, J, held that because control of vehicular speed on all streets in public parks is a matter of statewide concern, charter city's speed limit ordinance was preempted by duplicative, and thus conflicting, state law, and thus People were required to establish, as part of their prima facie case in speeding prosecutions, that arresting officer's testimony was not based upon speed trap.

Reversed.

People v. Oppenheimer

42 Cal.App.3d. Supp. 4.

The PEOPLE, Plaintiff and Respondent,

v.

John G. OPPENHEIMER, Defendant and Appellant.

Cr. A. 12647.

Appellate Department, Superior Court,

Los Angeles County

Aug. 14, 1974

Defendant was convicted of failing to stop for a traffic signal, after being denied a jury in the Municipal Court, Maurice J. Hindin, J. Defendant appealed. The Appellate Department, Superior Court, Cole, J., held that the charge of running a red light, were no claim was made that defendant's driving record was endangered or that a license was necessary for his livelihood, was a "petty" offense, and defendant had no constitutional right to jury trial.

Affirmed.

People v. Lucas

82 Cal.App.3d 49

The PEOPLE, Plaintiff and Respondent

V.

Leo Alex LUCAS, Defendant and Appellant

Joel GABRELOW

Doniel Zvi KRAMER

Cr. 31889

Court of Appeal, Second District, Division 4.

June 22, 1978.

As Modified July 21, 1978

Appeals were taken from judgment of Municipal Court, Beverly Hills Judicial District, Ronald R. Schoenberg, Commissioner, convicted motorist of traffic infractions. The Court of appeal; Files, P. J., held that statute authorizing a court commissioner to exercise power of judge with respect to traffic infraction case is valid exercise of power given to legislature by article of State Constitution authorizing legislature to provide for appointment by trial court of officers such as commissioners to perform subordinate judicial duties.

Affirmed.

Jefferson, J., filed a dissenting opinion

People v. Lucas

JEFFERSON, Associate Judge, dissenting

I dissent.

The majority upholds constitutional... that portion of Government Code... which provides: "At the direction of the Judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction." I disagree. ...the Government Code is unconstitutional insofar as it authorizes a commissioner to adjudicate "infraction" cases. I consider the adjudication of "infraction" cases as involving the exercise of **full** judicial power and **not** the exercise of **subordinate** judicial duties.

* * * * *

Although the majority considers fines ranging from $50 to $250 as **nonsubstantial**, there are millions of low-income citizens among California's many millions to whom such fines can be catastrophically devastating in terms of the effects upon their ability to meet their obligations for necessities of life.

* * * * *

I cannot accept the fact that the use of the terms.— **"convicted", "judgment"**, and**"punishment"** in statutory provisions dealing with criminal offense— can be converted, by fiat, as the majorty does, into being considered a relatively unimportant

and innocuous category of criminal offenses.

* * * * *

In reaching its holding, the majority also fails to give adequate recognition to ancillary results that are possible from a conviction of a Vehicle Code violation... if the defendant fails to pay the fine or any installment thereof on the date that it is due he shall appear in court on that date for further proceedings. Thus, an imprisonment sentence for contempt is a possible ancillary result from an infraction conviction. Another possible ancillary result of an infraction conviction is... order that a person... attend a school for instruction... "any person who willfully fails to comply with such order is guilty of a misdemeanor."

* * * * *

The ancillary effects of infraction fines that may well lead to punishment for additional offenses of misdemeanor and contempt, establish, without question, the seriousness and substantiality of infraction offenses.

* * * * *

The issue of witness credibility between the defendant and the police officer, usually involved in an infraction case, is equally as difficult to determine by the trier of fact as is the same issue of

credibility of witnesses involved in felony and misdemeanor trials.

* * * * *

I reject as completely untenable and indefensible the majority's notion that the trial of traffic-infractioncases calls for the talents of persons different from the talents of judges who preside over misdemeanor trials and preliminary examinations. A judge of the court, therefore, may well provide citizens with a more satisfying experience and opinion of the judicial process than that provided by commissioner.

* * * * *

The majority's position that there is something unique and specialized about the judicial function of adjudicating **contested** infraction cases to justify the Legislature's determination that commissioners may be authorized to adjudicate such cases under the concept that they are perfprming **subordinate** judicial duties is without foundation in logic or any sound principles of statutory construction.

* * * * *

It is my view that the Legislature had no valid reason to conclude that there was anything unique or special about the judicial function of

adjudicating contested infraction cases that makes this judicial function the performance of "subordinate judicial duties" as contrasted with the judicial function of adjudicating contested misdemeanors, preliminary hearings and civil cases that fall within the jurisdiction of the municipal court and constitute the performance of "full judicial power."

I would reverse each judgment of conviction.

People v. Carlucci

590 P.2d. 15 23 Cal.3d 249

The PEOPLE, Plaintiff and Respondent,

v.

Phillip Anthony CARLUCCI, Defendant and Appellant

v.

Walter George LAWRENCE,

Cr. 20487

Supreme Court of California, In Bank,

Feb. 7, 1979

Defendants were convicted on the Municipal Court of the Alhambra Judicial District and the Downey Judicial District of Los Angeles, Don D. Bercu, J., and Richard C. Cumming. Temporary Judge, of driving at excessive rates of speed and they appealed and their appeals were consolidated, The Supreme Court, Richardson, J., held that: (1) absence of prosecuting attorney at trial did not result in per se deprivation of defendants' rights to due process and fair trial; (2) record disclosed that judge in each case, in tone of his question and in nature of question posed, comported himself in manner oonsistent with what would be expected of any reasonable, conscientious judge in similar situation, that there was neither substance nor appearance of impropriety and that defendants were not deprived of fair and impartial trial, but (3) in view of People's stipulation of error, it would be unfair to levy fines.

Judgments reversed. K-4

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, D.C. 29543
1 (202) 479-3000

My Dear Justices:

Please appoint Mr. Donald C. Schwartz to make oral argument pro hac vice on my behalf, since he is admitted to the Bar of this Court, and I am not. He is located:

18 Crow Canyon Road, Ste. 220
San Ramon, CA 94583
1 (415) 743-9292

Please proceed via Rule 39.7 for I cannot pay the fee for his services. However SYNTROM Legal service, Inc. may, by order, help defray cost to the United States. My No. is CAHILL & Co.; plan type is RESS 567723458MZ; please contact claims department prior to any appointment. Phone No. is 1 (714) 699-6990, Virgil Snyder III, President. Thank you for your kind attention.

Most sincerely yours,

Timothy W. Sheehan
Pro se petitioner

DECLARATION OF SERVICE

I, Timothy Sheehan, attorney of record as pro se petitioner, declare under penalty of perjury that all parties were served by mailing certified first class mail with return receipt at U.S. Postal office in Alameda County, three (3) true copies of PETITION FOR WRIT OF CERTIORARI, each of them on August 28 , 1990 addressed as follows:

John J. Meehan, DA
District Attorney's Office
1225 Fallon Street
Oakland, CA 94612

John Van De Camp,
Attorney Gereral
350 Mc Allister
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Timothy W. Sheehan

Timothy W. Sheehan,
Pro se petitioner